

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EDILBERTO GOFF,

Plaintiff,

-against-

KALITTA AIR, LLC,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 22 2013 ★

BROOKLYN OFFICE

**REPORT AND
RECOMMENDATION**

/s/ Raymond J. Dearie
12-CV-4846 (RJD) (JMA)

11/21/13
Adopted without
qualification. Complaint
dismissed with prejudice
to refile

For the reasons set forth below, I respectfully recommend that the Honorable Raymond J. Dearie sua sponte dismiss plaintiff Edilberto Goff's complaint, with prejudice, for failure to prosecute.

This negligence suit, which stems from an accident that occurred in April 2010, was removed to federal court on September 27, 2012. An initial conference was originally scheduled to take place before me on November 29, 2012. Because plaintiff's counsel, Adam H. Hurwitz, informed the Court that he would seek to withdraw, I adjourned the initial conference on two occasions in order to allow plaintiff time to obtain new counsel. On March 4, 2013, I held a telephone status conference with all counsel and Goff. During that conference, I directed Goff to appear with new counsel at the next status conference, which was scheduled for April 15, 2013. On March 11, 2013, I signed a stipulation and order, which Goff and all counsel executed, permitting Hurwitz and his firm to withdraw.

Goff failed to appear at the April 15, 2013 status conference. On April 29, 2013, I issued an order directing Goff to appear at a second status conference before me on May 23, 2013. The order informed Goff that if he failed to attend, a recommendation of dismissal might follow. Goff, however, failed to appear at the May 23, 2013 status conference. On June 5, 2013, I issued

Here, dismissal with prejudice is warranted. Nothing has happened in this case since the March 4, 2013 conference. This action has been pending for more than a year, and over seven months have elapsed since plaintiff's counsel withdrew. During that time, plaintiff has failed to attend four court conferences and has not contacted the Court. There is no indication that plaintiff will pursue this action pro se and the Court has given plaintiff ample time to find new counsel. Moreover, I explicitly warned plaintiff that failure to attend the most recent status conference would result in a recommendation of dismissal "with prejudice." Accordingly, I respectfully recommend dismissal of the instant action, with prejudice, pursuant to Rule 41(b) and the Court's inherent authority to dismiss a case sua sponte for failure to prosecute.

Any objections to this report and recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of receipt of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6.

SO ORDERED.

Dated: October 21, 2013
Brooklyn, New York

/s/ _____
JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE